

ASSEMBLY BILL

No. 1786

Introduced by Assembly Member Galgiani

February 10, 2010

An act to amend Section 366.3 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 1786, as introduced, Galgiani. Dependent children: review hearings.

Existing law requires the court to hold a permanency hearing 12 months after a child enters foster care, and at that hearing, the court is required to determine the permanent plan for that child. Existing law, commencing July 1, 2010, and continuing until January 1, 2014, provides that if a juvenile court orders a permanent plan of adoption, tribal customary adoption, or legal guardianship, that the court retains jurisdiction over the child until the child is adopted or the legal guardianship is established, except as provided. Existing law provides that following establishment of a legal guardianship, the court is authorized to continue jurisdiction over the child as a dependent of the juvenile court or terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 366.3 of the Welfare and Institutions Code, as amended by Section 17 of Chapter 287 of the Statutes of 2009, is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption, tribal customary adoption, or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established, except as provided for in Section 366.29. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, or in the case of a tribal customary adoption, when the tribal customary adoption order has been afforded full faith and credit and the petition for adoption has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent-child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship that has been granted

1 pursuant to Section 360 or 366.26 shall be held either in the
2 juvenile court that retains jurisdiction over the guardianship as
3 authorized by Section 366.4 or the juvenile court in the county
4 where the guardian and child currently reside, based on the best
5 interests of the child, unless the termination is due to the
6 emancipation or adoption of the child. The juvenile court having
7 jurisdiction over the guardianship shall receive notice from the
8 court in which the petition is filed within five calendar days of the
9 filing. Prior to the hearing on a petition to terminate legal
10 guardianship pursuant to this subdivision, the court shall order the
11 county department of social services or welfare department having
12 jurisdiction or jointly with the county department where the
13 guardian and child currently reside to prepare a report, for the
14 court's consideration, that shall include an evaluation of whether
15 the child could safely remain in, or be returned to, the legal
16 guardian's home, without terminating the legal guardianship, if
17 services were provided to the child or legal guardian. If applicable,
18 the report shall also identify recommended family maintenance or
19 reunification services to maintain the legal guardianship and set
20 forth a plan for providing those services. If the petition to terminate
21 legal guardianship is granted, either juvenile court may resume
22 dependency jurisdiction over the child, and may order the county
23 department of social services or welfare department to develop a
24 new permanent plan, which shall be presented to the court within
25 60 days of the termination. If no dependency jurisdiction has
26 attached, the social worker shall make any investigation he or she
27 deems necessary to determine whether the child may be within the
28 jurisdiction of the juvenile court, as provided in Section 328.

29 Unless the parental rights of the child's parent or parents have
30 been terminated, they shall be notified that the legal guardianship
31 has been revoked or terminated and shall be entitled to participate
32 in the new permanency planning hearing. The court shall try to
33 place the child in another permanent placement. At the hearing,
34 the parents may be considered as custodians but the child shall not
35 be returned to the parent or parents unless they prove, by a
36 preponderance of the evidence, that reunification is the best
37 alternative for the child. The court may, if it is in the best interests
38 of the child, order that reunification services again be provided to
39 the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption or, for an Indian child, tribal customary adoption, may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. If the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services if it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.25, 366.26, or subdivision (h).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (g), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent

1 home for the child, shall consider the safety of the child, and shall
2 determine all of the following:

3 (1) The continuing necessity for, and appropriateness of, the
4 placement.

5 (2) Identification of individuals other than the child's siblings
6 who are important to a child who is 10 years of age or older and
7 has been in out-of-home placement for six months or longer, and
8 actions necessary to maintain the child's relationship with those
9 individuals, provided that those relationships are in the best interest
10 of the child. The social worker shall ask every child who is 10
11 years of age or older and who has been in out-of-home placement
12 for six months or longer to identify individuals other than the
13 child's siblings who are important to the child, and may ask any
14 other child to provide that information, as appropriate. The social
15 worker shall make efforts to identify other individuals who are
16 important to the child, consistent with the child's best interests.

17 (3) The continuing appropriateness and extent of compliance
18 with the permanent plan for the child, including efforts to maintain
19 relationships between a child who is 10 years of age or older and
20 who has been in out-of-home placement for six months or longer
21 and individuals who are important to the child and efforts to
22 identify a prospective adoptive parent or legal guardian, including,
23 but not limited to, child-specific recruitment efforts and listing on
24 an adoption exchange.

25 (4) The extent of the agency's compliance with the child welfare
26 services case plan in making reasonable efforts either to return the
27 child to the safe home of the parent or to complete whatever steps
28 are necessary to finalize the permanent placement of the child. If
29 the reviewing body determines that a second period of reunification
30 services is in the child's best interests, and that there is a significant
31 likelihood of the child's return to a safe home due to changed
32 circumstances of the parent, pursuant to subdivision (f), the specific
33 reunification services required to effect the child's return to a safe
34 home shall be described.

35 (5) Whether there should be any limitation on the right of the
36 parent or guardian to make educational decisions for the child.
37 That limitation shall be specifically addressed in the court order
38 and may not exceed what is necessary to protect the child. If the
39 court specifically limits the right of the parent or guardian to make
40 educational decisions for the child, the court shall at the same time

1 appoint a responsible adult to make educational decisions for the
2 child pursuant to Section 361.

3 (6) The adequacy of services provided to the child. The court
4 shall consider the progress in providing the information and
5 documents to the child, as described in Section 391. The court
6 shall also consider the need for, and progress in providing, the
7 assistance and services described in paragraphs (3) and (4) of
8 subdivision (b) of Section 391.

9 (7) The extent of progress the parents or legal guardians have
10 made toward alleviating or mitigating the causes necessitating
11 placement in foster care.

12 (8) The likely date by which the child may be returned to, and
13 safely maintained in, the home, placed for adoption, legal
14 guardianship, in another planned permanent living arrangement,
15 or, for an Indian child, in consultation with the child's tribe, placed
16 for tribal customary adoption.

17 (9) Whether the child has any siblings under the court's
18 jurisdiction, and, if any siblings exist, all of the following:

19 (A) The nature of the relationship between the child and his or
20 her siblings.

21 (B) The appropriateness of developing or maintaining the sibling
22 relationships pursuant to Section 16002.

23 (C) If the siblings are not placed together in the same home,
24 why the siblings are not placed together and what efforts are being
25 made to place the siblings together, or why those efforts are not
26 appropriate.

27 (D) If the siblings are not placed together, the frequency and
28 nature of the visits between siblings.

29 (E) The impact of the sibling relationships on the child's
30 placement and planning for legal permanence.

31 The factors the court may consider as indicators of the nature of
32 the child's sibling relationships include, but are not limited to,
33 whether the siblings were raised together in the same home,
34 whether the siblings have shared significant common experiences
35 or have existing close and strong bonds, whether either sibling
36 expresses a desire to visit or live with his or her sibling, as
37 applicable, and whether ongoing contact is in the child's best
38 emotional interests.

1 (10) For a child who is 16 years of age or older, the services
2 needed to assist the child to make the transition from foster care
3 to independent living.

4 The reviewing body shall determine whether or not reasonable
5 efforts to make and finalize a permanent placement for the child
6 have been made.

7 Each licensed foster family agency shall submit reports for each
8 child in its care, custody, and control to the court concerning the
9 continuing appropriateness and extent of compliance with the
10 child's permanent plan, the extent of compliance with the case
11 plan, and the type and adequacy of services provided to the child.

12 (f) Unless their parental rights have been permanently
13 terminated, the parent or parents of the child are entitled to receive
14 notice of, and participate in, those hearings. It shall be presumed
15 that continued care is in the best interests of the child, unless the
16 parent or parents prove, by a preponderance of the evidence, that
17 further efforts at reunification are the best alternative for the child.
18 In those cases, the court may order that further reunification
19 services to return the child to a safe home environment be provided
20 to the parent or parents up to a period of six months, and family
21 maintenance services, as needed for an additional six months in
22 order to return the child to a safe home environment.

23 (g) At the review conducted by the court and held at least every
24 six months, regarding a child for whom the court has ordered
25 parental rights terminated and who has been ordered placed for
26 adoption, or, for an Indian child for whom parental rights are not
27 being terminated and a tribal customary adoption is being
28 considered, the county welfare department shall prepare and present
29 to the court a report describing the following:

30 (1) The child's present placement.

31 (2) The child's current physical, mental, emotional, and
32 educational status.

33 (3) If the child has not been placed with a prospective adoptive
34 parent or guardian, identification of individuals, other than the
35 child's siblings, who are important to the child and actions
36 necessary to maintain the child's relationship with those
37 individuals, provided that those relationships are in the best interest
38 of the child. The agency shall ask every child who is 10 years of
39 age or older to identify any individuals who are important to him
40 or her, consistent with the child's best interest, and may ask any

1 child who is younger than 10 years of age to provide that
2 information as appropriate. The agency shall make efforts to
3 identify other individuals who are important to the child.

4 (4) Whether the child has been placed with a prospective
5 adoptive parent or parents.

6 (5) Whether an adoptive placement agreement has been signed
7 and filed.

8 (6) If the child has not been placed with a prospective adoptive
9 parent or parents, the efforts made to identify an appropriate
10 prospective adoptive parent or legal guardian, including, but not
11 limited to, child-specific recruitment efforts and listing on an
12 adoption exchange.

13 (7) Whether the final adoption order should include provisions
14 for postadoptive sibling contact pursuant to Section 366.29.

15 (8) The progress of the search for an adoptive placement if one
16 has not been identified.

17 (9) Any impediments to the adoption or the adoptive placement.

18 (10) The anticipated date by which the child will be adopted or
19 placed in an adoptive home.

20 (11) The anticipated date by which an adoptive placement
21 agreement will be signed.

22 (12) Recommendations for court orders that will assist in the
23 placement of the child for adoption or in the finalization of the
24 adoption.

25 The court shall determine whether or not reasonable efforts to
26 make and finalize a permanent placement for the child have been
27 made.

28 The court shall make appropriate orders to protect the stability
29 of the child and to facilitate and expedite the permanent placement
30 and adoption of the child.

31 (h) At the review held pursuant to subdivision (d) for a child in
32 long-term foster care, the court shall consider all permanency
33 planning options for the child including whether the child should
34 be returned to the home of the parent, placed for adoption, or, for
35 an Indian child, in consultation with the child's tribe, placed for
36 tribal customary adoption, or appointed a legal guardian, or, if
37 compelling reasons exist for finding that none of the foregoing
38 options are in the best interest of the child, whether the child should
39 be placed in another planned permanent living arrangement. The
40 court shall order that a hearing be held pursuant to Section 366.26,

1 unless it determines by clear and convincing evidence that there
2 is a compelling reason for determining that a hearing held pursuant
3 to Section 366.26 is not in the best interest of the child because
4 the child is being returned to the home of the parent, the child is
5 not a proper subject for adoption, or no one is willing to accept
6 legal guardianship. If the licensed county adoption agency, or the
7 department when it is acting as an adoption agency in counties
8 that are not served by a county adoption agency, has determined
9 it is unlikely that the child will be adopted or one of the conditions
10 described in paragraph (1) of subdivision (c) of Section 366.26
11 applies, that fact shall constitute a compelling reason for purposes
12 of this subdivision. Only upon that determination may the court
13 order that the child remain in foster care, without holding a hearing
14 pursuant to Section 366.26.

15 (i) If, as authorized by subdivision (h), the court orders a hearing
16 pursuant to Section 366.26, the court shall direct the agency
17 supervising the child and the licensed county adoption agency, or
18 the State Department of Social Services when it is acting as an
19 adoption agency in counties that are not served by a county
20 adoption agency, to prepare an assessment as provided for in
21 subdivision (i) of Section 366.21 or subdivision (b) of Section
22 366.22. A hearing held pursuant to Section 366.26 shall be held
23 no later than 120 days from the date of the 12-month review at
24 which it is ordered, and at that hearing the court shall determine
25 whether adoption, tribal customary adoption, legal guardianship,
26 or long-term foster care is the most appropriate plan for the child.

27 (j) The implementation and operation of the amendments to
28 subdivision (e) enacted at the 2005–06 Regular Session shall be
29 subject to appropriation through the budget process and by phase,
30 as provided in Section 366.35.

31 (k) The reviews conducted pursuant to subdivision (a) or (d)
32 may be conducted earlier than every six months if the court
33 determines that an earlier review is in the best interests of the child
34 or as court rules prescribe.

35 (l) This section shall remain in effect only until January 1, 2014,
36 and as of that date is repealed, unless a later enacted statute, that
37 is enacted before January 1, 2014, deletes or extends that date.